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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/613,761

07/02/2003

Lishan Aklog

113002-010101/US

7167

35893

7590

08/21/2008

GREENBERG TRAURIG, LLP

ONE INTERNATIONAL PLACE, 20th FL.

ATTN: PATENT ADMINISTRATOR

BOSTON, MA 02110

EXAMINER

PREBILIC, PAUL B

ART UNIT

PAPER NUMBER

3774

MAIL DATE

DELIVERY MODE

08/21/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/613,761

## Applicant(s)

AKLOG, LISHAN

## Examiner

Paul B. Prebilib

## Art Unit

3774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1, 4-8, 10, 12-23, 25-44, 50, 54 and 58-63 is/are pending in the application.
- 4a) Of the above claim(s) 5, 14-16, 18, 19, 21-23, 25, 26, 29-44, 50, 54 and 58-62 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4-6-8, 10, 12, 13, 17, 20, 27, 28 and 63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-846)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### ***Election/Restrictions***

Claims 5, 14-16, 18, 19, 21-23, 25, 26, 29-44, 50, 54, and 58-62 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions or species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on December 2004 where Group I (device) and Species E (Figure 3D) were selected for prosecution.

### ***Claim Objections***

Claims 1 and 63 are objected to because of the following informalities: on the second to last line of claim 1 and the last line of claim 63, the language "either leaflets" is grammatically awkward and does not match the "two or more leaflets" language it references. The Examiner suggests changing this language to ---any leaflets--- in order to overcome this objection. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 6, 7, 8, 10, 12, 13, 17, 20, 27, 28, and 63 are rejected under 35 U.S.C. 102(e) as anticipated by Streeter (US 2006/0247492) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Streeter (US 2006/0247492) alone. Streeter anticipates the claim language where Figure 9 shows a ring with restraining members extending across the middle thereof that reasonably appears so similar to that of the claimed species (Figure 3D) that it would inherently perform the functions claimed; see also paragraphs [0029] to [0031] and see MPEP sections 2112 and 2112.01 that are incorporated herein by reference. In particular, it is noted that there is no guidance as how one would optimize the structure to perform the functions of minimizing leaflet contact and occurrences of prolapsing leaflets as claimed.

Alternatively, since there are six restraining members in the present species (Figure 3D) instead of only five in Streeter's device, one could argue that the two inventions are not identical. However, the Examiner asserts that the claimed invention is so similar to that of Streeter that it would have been considered obvious to an ordinary artisan.

With regard to claim 8, rigidity is a matter of degree and Streeter's ring (Figure 10) is considered rigid to the extent required by the present claim.

With regard to claim 28, Figure 10 looks D shaped such that the claim language is considered fully met.

### ***Response to Arguments***

In response to the traversal filed May 28, 2008 that Streeter fails to teach the claimed functions (see page 10 of the response), the Examiner asserts that these functions are inherent and hereby requires the Applicant to prove the prior art device does not necessarily or inherently possess these functions; see MPEP 2112 V.

Furthermore, the rejection language has been modified to address the new language so the Applicant should consider the rejection a rebuttal of the Applicant's arguments as well. In particular, Streeter anticipates the claim language where Figure 9 shows a ring with restraining members extending across the middle thereof that reasonably appears so similar to that of the claimed species (Figure 3D) that it would inherently perform the functions claimed. Furthermore, it is noted that there is no guidance as how one would optimize the structure to perform the functions of minimizing leaflet contact and occurrences of prolapsing leaflets as claimed.

Alternatively, since there are six restraining members and a relatively thicker ring in the present species (Figure 3D) instead of only five in Streeter's device, one could argue that the two inventions are not identical. However, the Examiner asserts that the claimed invention is so similar to that of Streeter that it would have been considered obvious to an ordinary artisan.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). Due to the procedure outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 or 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is respectfully requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending claims is respectfully requested in response to this Office action if the application is not stored in image format (i.e. the IFW system) or published.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Paul B. Prebilic whose telephone number is (571) 272-4758. He can normally be reached on 6:30-5:00 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Paul Prebilic/  
Paul Prebilic  
Primary Examiner  
Art Unit 3774